



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

May 10, 2019

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-15-1504

Dear Mr. President:

I am forwarding to you a report from the Department of the Interior (DOI) based on disclosures of wrongdoing at the Bureau of Indian Affairs (BIA), Crow Creek Agency Social Services Program, Child Protection Division, Fort Thompson, South Dakota. The whistleblower, [REDACTED], a child welfare specialist, who consented to the release of his name, disclosed that his supervisor, [REDACTED], improperly placed children in treatment facilities and failed to perform mental health evaluations as required prior to placement. I have reviewed the agency reports and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the reports, whistleblower comments, and my findings.¹

[REDACTED] alleged that [REDACTED] who is not a licensed mental health professional, improperly recommended the placement of children in psychiatric facilities without the requisite authority to do so and repeatedly failed to ensure that a psychological evaluation was performed when she recommended the placement of individuals in psychiatric treatment facilities in violation of state and tribal laws.

In support of his allegations, [REDACTED] provided information about "Client 1," a minor who shall remain anonymous, and whose situation [REDACTED] contended illustrates an example of [REDACTED] improper actions. [REDACTED] alleged that [REDACTED] unilaterally and improperly transferred "Client 1" from a juvenile detention facility to an inpatient sexual treatment facility. [REDACTED] further asserted that [REDACTED] has inappropriately intervened in approximately 50 cases similar to "Client 1" since 2010.

The agency substantiated that [REDACTED] does not have the degrees and licenses necessary to be a qualified mental health professional (QMHP) in South Dakota. The agency concluded, however, that her position within BIA does not require her to be a QMHP in order to fulfill the responsibilities of her position.

[REDACTED] allegations were referred to former DOI Secretary Sally Jewell for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The DOI Office of the Inspector General conducted the investigation. Former Secretary Jewell delegated authority to sign the report to the former BIA Director Michael S. Black.

The President
May 10, 2019
Page 2 of 4

The agency, however, did not substantiate [REDACTED] allegations that [REDACTED] was performing the duties of a QMHP. The investigation determined that [REDACTED] does not perform psychiatric, psychological, or similar evaluations on children. Instead, [REDACTED] is authorized to act on behalf of the BIA as a referring entity. As a referring entity, she is authorized to collect all relevant records to support referral of children who may benefit from placement in a facility to a State Review Team (SRT) as well as a Certification Team (CT). The SRT and CT subsequently review the records BIA provides and determine the appropriate level of care for a child in accordance with South Dakota statutes and policies. The agency found that, as a part of the referral process for each child, [REDACTED] ensured that a psychological evaluation had been completed and submitted to the SRT to support a placement decision.

The agency did not substantiate [REDACTED] allegation that [REDACTED] had improperly referred 50 children for residential placement because the agency investigators were unable to find evidence to support [REDACTED] assertion. The agency found that the Crow Creek Agency had only referred a small number of children for placement in the past 5 years, and that [REDACTED] only referred one of those children, "Client 1." The agency further found that [REDACTED] had properly procured a psychological evaluation for "Client 1" prior to the referral.

[REDACTED] disputed the agency's findings asserting that the transfer of "Client 1" from the juvenile detention facility to the inpatient sexual treatment facility was personally done by [REDACTED] without giving notice to "Client 1" or "Client 1"'s family, and without notice of a right for an alternative psychological evaluation. He further stated that the inpatient sexual treatment facility later gave notice to [REDACTED] that it would no longer accept referrals without documentation that evaluations and notices were provided to the referee. [REDACTED] also contended that "Client 1" consistently stated that "Client 1" was unaware of being transferred to an inpatient sexual treatment center and that "Client 1" repeatedly stated the allegations of sexual misconduct were false. [REDACTED] also asserted that [REDACTED] was in a position classified as a GS-0185, requiring a QMHP, but that it was reclassified to a GS-0101, which does not require a QMHP, in order to hire her.

OSC requested that the agency provide a supplemental response to clarify its reasons for reclassifying [REDACTED] position from a GS-0185, which does require a QMHP, to a GS-0101, which only requires a bachelor's degree in a field related to human services or social services. Additionally, OSC requested that the agency clarify whether investigators spoke to SRT members regarding the extent of their review in the referral and facility placement process.

In its supplemental response, the agency stated that the program manager position description was not changed specifically for [REDACTED] and that it was unable to find any documentation showing that [REDACTED]'s position was ever in the GS-0185 series. The

The President
May 10, 2019
Page 3 of 4

agency further stated that when there are no other services in the community that meet the needs of an individual, the BIA would make a referral to the SRT. The SRT then makes a medical determination and obtains Medicaid approval for the referral. The BIA provides needed information for the SRT's medical determination and Medicaid approval.

OSC requested further clarification from the agency as to why the GS-0185 series was used to classify [REDACTED] GS-0101 series position if she was not in a GS-0185 position. The agency provided a final response stating that the Office of Personnel Management (OPM) had not issued standards for the GS-0101 Social Services Manager position. As a result, and in accordance with OPM guidance, the agency utilized other relevant job series as a basis for creating a program description for the GS-0101 position. As part of that process, the agency used the GS-0185 series² to classify the work performed in the GS-0101 series³, but it modified the requirements and responsibilities to align with the work performed by the GS-0101 position. Importantly, the agency asserted the modifications did not provide [REDACTED] with the authority of a QMHP, nor the ability to place children in psychiatric facilities. The agency reiterated that [REDACTED] was limited to merely referring children who may benefit from placement in a facility to a SRT for further evaluation and final determination.

The whistleblower disagreed with these additional findings and raised concerns that the Superintendent and Deputy Superintendent were complicit in using the GS-0185 series classification to circumvent the GS-0101 series classification standards. The whistleblower reiterated that that in doing so, [REDACTED] was able to provide services as a GS-0185 series without being a QMHP.

I have reviewed the original disclosure, the agency reports, and the whistleblower comments. The agency reviewed documents from files relating to "Client 1," occupational and classification standards, as well as other documents that detailed the duties, responsibilities, and requirements of [REDACTED] position. In its reports, the agency sufficiently explained that [REDACTED] is not a QMHP and that she does not need to be one to fulfill the responsibilities of her position. When placement of a child is warranted, [REDACTED] acts on behalf of the BIA as a referring entity, collecting all

² The GS-0185 Social Work Series "covers positions that require application of a professional knowledge of the principles and practices of social work in the performance of such assignments as providing direct services to individuals and families, including work with individuals in groups. Also included are positions concerned with teaching social work, doing research on social work problems, training of social work students, and providing consultation and advice to members of related professions and community organizations on social work questions." See OPM, Handbook of Occupational Groups and Families (2009).

³ The GS-0101 Social Science Series "covers positions the duties of which are to advise on, administer, supervise or perform research or other professional and scientific work in one or nay combination of the social sciences when such work is not classifiable in other series of this occupational group." See OPM, Handbook of Occupational Groups and Families (2009).

The President
May 10, 2019
Page 4 of 4

pertinent records to support a referral to residential care. The SRT, as well as a CT, reviews the records the BIA provides and makes a determination about the appropriate level of care for the child. Both the SRT and CT have QMHPs who are authorized to perform and review any evaluations required for consideration of residential care. [REDACTED] does not have a role or any influence in placement decisions. While the whistleblower disputes the agency's findings, the reports sufficiently explained and clarified [REDACTED] position and the processes for referring and placing children in psychiatric facilities. I have determined that the reports meet all statutory requirements, and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and the whistleblower comments to the Chairmen and Ranking Members of the Senate Committee on Indian Affairs and the House Committee on Natural Resources. I have also placed redacted copies of these documents and a redacted copy of the referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in blue ink, appearing to be 'HJ Kerner', written in a cursive style.

Henry J. Kerner
Special Counsel

Enclosure